

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

SONY BMG CD  
TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

AFFIDAVIT OF KIMBERLY K. NESS WITH RESPECT TO  
COMPLIANCE WITH THE NOTICE PROCESS

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF RICE         )

I, Kimberly K. Ness, declare as follows:

1. I am a Senior Project Administrator for Rust Consulting, Inc. ("Rust Consulting"). My business address is 201 South Lyndale, Faribault, Minnesota 55021. My telephone number is (507) 333-4567. I am over twenty-one years of age and authorized to make this affidavit on behalf of Rust Consulting, Inc. and myself.

2. I submit this report to inform the Court of the notification process and other administrative duties performed in the above-captioned action (the "Proposed Settlement"). Except as otherwise stated, I am fully familiar with, and have personal knowledge of, the matters stated in this report. If called as a witness, I am competent to testify to these matters.

3. Rust Consulting specializes in class action notification and claims administration, including telephone support, website implementation and direct mail services. Rust Consulting has provided claims administration services for class actions containing up to 7 million class members in cases involving consumers, pension benefits, securities, product liability, insurance, antitrust, fraud, property, employment, discrimination, bankruptcy and other types of class action cases. We regularly provide large-scale notification, claim form request processing, claims

validation and processing, website information on a settlement, check distribution, and claims administration services.

4. Rust Consulting has provided notification and/or claims administration services in more than 500 class actions including: State of Connecticut v. Mylan Laboratories, Inc., MDL No. 1290, Misc. No. 99-276 (antitrust); In re Metropolitan Life Insurance Co., Misc. Docket No. 96-179, MDL No. 1091, Western District of Pennsylvania 1999 (life insurance sales practices); Cox v. Shell Oil Co., No. 18,844, Tenn. Ch. Obion Co. June 13, 1995 (polybutylene pipe settlement); Forbush v. J.C. Penney Co., Nos. 3:90-2719-X, 3:92-0109-X Northern Dist. of Texas (pension fund settlement); Garza v. Sporting Goods Properties, Inc., No. SA 93-CA-1082 Western Dist. of Texas (Remington shotgun settlement); Woosley v. State of California, No. CA 000499, California Sup. Court, Los Angeles County (motor vehicle licensing fees class action); Jordan v. State Farm Life Insurance, No. 97 CH 11, Illinois Circuit Court, McLean County (life insurance sales practices settlement); and a variety of other class actions. Rust Consulting also served as the claims balloting agent for the bankruptcy case In re The Celotex Corp., Consolidated Case Nos. 90-10016-8B1 and 90-10017-8B1, Bankruptcy M.D. Florida.

5. Rust Consulting was engaged by counsel to the parties in this action to administer the Proposed Settlement. Related duties included: a) publishing the Summary Notice of Preliminary Approval and Claims Process ("Summary Notice"); b) website development and implementation; c) establishing and maintaining a toll free number for class members to call and receive a detailed message and request a Notice and Claim Form; d) renting a post office box for requests for Claim Forms and other communications about the Proposed Settlement from the class members; e) receipting and processing claim forms; f) receipting and processing of class member exclusion requests ; and g) receipting and processing of class member correspondence.

6. Rust Consulting obtained a mailing address (P.O. Box 1804, Faribault, Minnesota 55021-1852) to receive Request for Exclusion Forms, Claim Forms, and class member correspondence. This mailing address will be maintained by Rust Consulting until February 28, 2007.

The Summary Notice was published, in English or in Spanish, in the following newspapers and magazines beginning February 10, 2006:

Name of Publication	Day of the Week	Publication Date	Circulation
People Magazine	Friday	February, 10, 2006	3,400,000
Rolling Stone Magazine	Monday	February 13, 2006	1,250,000
USA Today	Monday	February 13, 2006	2,300,000
Atlanta Journal Constitution	Monday	February 13, 2006	387,802
Austin American Statesman	Monday	February 13, 2006	180,984
Chicago Tribune	Monday	February 13, 2006	686,242
Dallas Morning News	Monday	February 13, 2006	468,221
Los Angeles Times	Monday	February 13, 2006	961,990
Miami Herald	Monday	February 13, 2006	402,706
New York Daily News	Monday	February 13, 2006	730,500
New York Post	Monday	February 13, 2006	636,579
San Francisco Chronicle	Monday	February 13, 2006	506,407
La Opinion (CA)	Monday	February 13, 2006	125,624
Hoy (NY)	Monday	February 13, 2006	46,784
Rumbo (TX)	Monday	February 13, 2006	49,000
El Nuevo Herald (FL)	Monday	February 13, 2006	88,977
La Subasta Houston (TX)	Tuesday	February 14, 2006	163,000

A copy of the complete Summary Notice, and copies of each of the forms of published noticed identified in the above table, are attached as Exhibit A.

7. Rust Consulting established and maintains a website domain name ([www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com)) to enable members of the Proposed Settlement

Class to: a) obtain general information on the Proposed Settlement; b) review the Settlement Agreement and other Settlement documents; c) review and print the Notice to Class Members or Summary Notice; d) review and print a Claim Form; e) register a Claim Form online; f) receive software updates and uninstallers; and g) receive software technical support. This website was available to the public on February 10, 2006, and was last updated on March 19, 2006. As of April 2, 2006, the website has had a total of 149,898 visitors. This URL address associated with this website appeared in the published Summary Notice, and will be maintained by Rust Consulting through February 28, 2007.

9. Rust Consulting also has established and maintains a toll free phone number (1-800-242-7610) to enable members of the Proposed Settlement Class to request a Notice and Claim Form to be mailed to them as well as to receive general information on the settlement. This telephone number appeared in the published Summary Notice, and will be maintained by Rust Consulting through February 28, 2007. As of April 2, 2006, the toll free number has received 1,008 total calls.

10. Rust Consulting has received and processed class member correspondence. Class member correspondence includes all written communications from Class Members other than the completed Claim Form. As of April 2, 2006, Rust Consulting has received 841 (email + postal) pieces of correspondence. Rust Consulting will continue to receive and process class member correspondence through February 28, 2007.

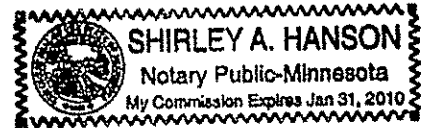
11. Rust Consulting has received and processed Request for Exclusion Forms. As of April 2, 2006, Rust Consulting has received 7 Exclusion Forms. A list of these Exclusion Requests is attached as Exhibit C. Rust Consulting will continue to receive and process Exclusion Forms postmarked no later than May 1, 2006.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Executed this 4th day of April, 2006 in Faribault, Minnesota.

Kimberly K. Ness  
Kimberly K. Ness, Senior Project Administrator

Subscribed and sworn to me this 4 day of April, 2006.

Shirley A. Hanson  
Notary Seal



## Legal Notice

**If You Bought, Received or Used a SONY BMG Music Entertainment CD  
Containing Either XCP or MediaMax Content Protection Software,  
Your Rights May Be Affected By a Class Action Settlement,  
And You Should Download Updates For That Software.**

**What is this about?**

A settlement has been proposed in a lawsuit brought against SONY BMG Music Entertainment, Inc., SunnCom International Inc., and First 4 Internet, Ltd. ("Defendants"). The lawsuit, *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB, is pending in the United States District Court for the Southern District of New York and relates to XCP and MediaMax content protection software installed on certain SONY BMG music CDs.

The settlement resolves claims that the Defendants manufactured and sold CDs containing XCP and MediaMax software without adequately disclosing the limitations the software imposes on the use of the CDs and the security vulnerabilities it creates. The Defendants have denied that they did anything wrong.

**Who Is Included, And What Does The Settlement Provide?**

The settlement provides relief for persons who bought, received or used SONY BMG CDs with either XCP or MediaMax software. Under the settlement, any person in possession of an XCP CD can exchange it for a replacement CD, an MP3 download of the same album, and either (a) cash payment of \$7.50 and one (1) free album download from a list of 200 albums, or (b) three (3) free album downloads from that list. Purchasers of CDs containing MediaMax 5.0 software will receive a free MP3 download of the same album and one (1) additional free album download. Purchasers of CDs containing MediaMax 3.0 software will receive a free MP3 download of the same album.

The settlement also requires the Defendants to stop manufacturing SONY BMG CDs with XCP or MediaMax 3.0 and 5.0 software and, until 2008: (1) make available updates to fix all known security vulnerabilities caused by XCP and MediaMax software; (2) provide software programs to uninstall XCP and MediaMax software safely; (3) fix any future security vulnerabilities discovered in MediaMax and any other content protection software placed on SONY BMG CDs; (4) provide independent verification

that personal information about users of SONY BMG CDs has not and will not be collected through XCP or MediaMax; (5) waive certain provisions of the end user license agreements for XCP and MediaMax software; and (6) ensure that any other content protection software will be clearly disclosed, independently tested and readily uninstalled.

At 9:15 a.m. on May 22, 2006, the Court will hold a hearing at the United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York 10007-1312, to decide whether to approve the settlement and the class attorneys' fees and costs.

**How Do I Participate In The Settlement?**

If you bought or received a SONY BMG Music CD containing XCP or MediaMax software and want to receive the relief you may be eligible for under the settlement, you must submit an online claim form at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com), or mail a claim form to:

SONY BMG CD Technologies Settlement  
P.O. Box 1804, Faribault, MN 55021-1804

All claim forms must be submitted by **December 31, 2006**.

**What Are My Other Options?**

If you bought, received or used a SONY BMG Music CD containing XCP or MediaMax software, and you do not want to be legally bound by the settlement or receive a replacement CD, cash, free downloads or other relief, you must exclude yourself by **May 1, 2006**. If you do not exclude yourself, certain of your claims against the Defendants that were or could have been asserted in the lawsuit will be released, meaning you may not be able to sue the Defendants for those claims.

To view the detailed legal Notice of Proposed Class Action Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and to download the software updates, visit [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). You may obtain further information by contacting the claims administrator at the address above or by calling toll free 1-800-242-7610.



## Notificación legal

**Si usted compró, recibió o usó un CD de SONY BMG Music Entertainment con software de protección de contenido de XCP o de MediaMax, es posible que sus derechos se vean afectados por un arreglo de acción colectiva, y debe bajar actualizaciones de ese software.**

**¿De qué se trata?**

Se ha propuesto un arreglo en un juicio promovido en contra de SONY BMG Music Entertainment, Inc., SunnCom International Inc. y First 4 Internet, Ltd. ("Demandados"). El juicio, *In re SONY BMG CD Technologies Litigation*, Expediente N° 1:05-cv-09575-NRB, está pendiente en el Tribunal de Distrito de los Estados Unidos del Distrito Sur de New York y tiene que ver con software de protección de contenido de XCP y de MediaMax instalado en ciertos CD de música de SONY BMG.

El arreglo resuelve los reclamos en el sentido que los Demandados fabricaron y vendieron CD con el software de XCP y de MediaMax sin divulgar adecuadamente las limitaciones impuestas por el software en el uso de los CD y las vulnerabilidades que crea en la seguridad. Los Demandados han negado que hayan procedido mal.

**¿Quiénes están incluidos y qué proporciona el arreglo?**

El arreglo proporciona reparación para las personas que compraron, recibieron o usaron CD de SONY BMG con el software de XCP o de MediaMax. Bajo el arreglo, toda persona que posea un CD con XCP podrá cambiarlo por un CD de reemplazo, una descarga en MP3 del mismo álbum y o (a) un pago en efectivo de \$7.50 y la descarga gratis de un (1) álbum de una lista de 200 álbumes o (b) la descarga gratis de tres (3) álbumes de esa lista. Los compradores de CD con el software MediaMax 5.0 recibirán una descarga gratis en MP3 del mismo álbum y la descarga gratis adicional de un (1) álbum. Los compradores de CD con el software MediaMax 3.0 recibirán la descarga gratis en MP3 del mismo álbum.

El arreglo también exige que los Demandados dejen de fabricar CD SONY BMG con el software de XCP o MediaMax 3.0 y 5.0, y que, hasta el año 2008: (1) ofrezcan actualizaciones para arreglar todas las vulnerabilidades de seguridad conocidas causadas por el software de XCP y de MediaMax; (2) proporcionen programas de software para desinstalar el software de XCP y de MediaMax en forma segura; (3) arreglen toda vulnerabilidad de seguridad descubierta en el futuro en el software de MediaMax y cualquier otro software de protección del contenido colocado en los CD de SONY BMG; (4) proporcionen verificación independiente de

que no se reunido ni se reunirá la información personal acerca de los usuarios de los CD de SONY BMG por medio de XCP o MediaMax; (5) renuncien a ciertas disposiciones de los acuerdos de licencia para los usuarios finales del software de XCP y de MediaMax; y (6) aseguren que cualquier otro software de protección del contenido esté claramente divulgado, probado independientemente y que sea fácil de desinstalar.

A las 9:15 a.m. del 22 de mayo de 2006, el Tribunal realizará una audiencia en el Tribunal de Distrito de los Estados Unidos, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York 10007-1312, para decidir si aprobará el arreglo, así como los honorarios y los costos de los abogados colectivos.

**¿Cómo participo en el arreglo?**

Si usted compró o recibió un CD de música de SONY BMG con software de XCP o de MediaMax y desea recibir la reparación que le podría corresponder bajo el arreglo, debe presentar un formulario de reclamo en línea en [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com), o enviar un formulario de reclamo a:

SONY BMG CD Technologies Settlement  
P.O. Box 1804, Faribault, MN 55021-1804

Todos los formularios de reclamo deben presentarse antes del fin del día **31 de diciembre de 2006**.

**¿Tengo otras opciones?**

Si usted compró, recibió o usó un CD de música de SONY BMG con software de XCP o de MediaMax, y no desea estar legalmente obligado por el arreglo ni recibir un CD de reemplazo, efectivo, descargas gratis u otra reparación, debe excluirse antes del fin del día **1º de mayo de 2006**. Si no se excluye, algunos de sus reclamos en contra de los Demandados que fueron o que podrían haber sido afirmados en el juicio serán liberados, lo cual significa que tal vez no pueda demandar a los Demandados por esos reclamos.

Para ver la Notificación legal del arreglo propuesto para la acción colectiva, moción para los honorarios de los abogados y audiencia sobre la equidad del arreglo en detalle y para bajar las actualizaciones del software, visite a [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). Puede obtener información adicional poniéndose en contacto con el administrador de reclamos en esta misma dirección o llamando, sin cargo, al teléfono 1-800-242-7610.

Exhibit B

Rust Consulting, Inc.  
 Sony BMG CD Technologies Litigation  
 Exclusion Request Report  
 April 3, 2006

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Phone Number</u>	<u>Postmark Date</u>	<u>Received Date</u>
DANIEL HYNES	1607 MAIN ST A219	SPRINGFIELD	MA	01103	(413)746-0784	02/18/2006	02/21/2006
ELIZABETH BLACK	3418 ROXANNE BLVD	SARASOTA	FL	34235	NOT LISTED	02/17/2006	02/21/2006
PETER FINNECY	18 COLUMBUS AVE	GLEN RIDGE	NJ	07028	(973)233-1012	03/14/2006	03/17/2006
ALICIA KAMENICK	6520 24TH AVE NW #303	SEATTLE	WA	98117	(206)354-5381	03/16/2006	03/20/2006
ROBERT O'NEIL	7715 BEAVER RD	WONDER LAKE	IL	60097	(815)728-1019	03/23/2006	03/27/2006
AISHA SHABAZZ	2593 FIELDSTONE VIEW LANE SE	CONYERS	GA	30013-2136	NOT LISTED	03/28/2006	03/31/2006
REYNA ARAUJO	7018 HAZEN ST	HOUSTON	TX	77074-4728	NOT LISTED	03/28/2006	03/31/2006